



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

First Account Current and Report of Trustee; Petition for Allowance of Compensation to Trustee and Attorney

			PUBLIC GUARDIAN , Trustee, is petitioner.	NEEDS/PROBLEMS/COMMENTS: Note: If the petition is granted, status hearings will be set as follows: <ul style="list-style-type: none"> Friday, November 9, 2015 at 9:00 a.m. in Department 303, for the filing of the second account. Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.
			Account period: 6/11/12 – 6/10/13	
			Accounting - \$42,297.32	
			Beginning POH - \$0	
			Ending POH - \$38,363.32	
Cont. from			Trustee - \$1,115.00 (7.27	
	Aff.Sub.Wit.		Deputy hours @ \$96/hr and 5.5 Staff hours @ \$76/hr)	
✓	Verified		Attorney - \$1,250.00	
	Inventory		(per Local Rule for conservatorships)	
	PTC		Bond fee - \$95.91 (o.k.)	
	Not.Cred.		Petitioner prays for an Order:	
✓	Notice of Hrg		1. Approving, allowing and settling the first account.	
✓	Aff.Mail	W/	2. Authorizing the trustee and attorney fees and commissions	
	Aff.Pub.		3. Payment of the bond fee	
	Sp.Ntc.			
	Pers.Serv.			
	Conf. Screen			
	Letters			
	Duties/Supp			
	Objections			
	Video Receipt			
	CI Report			
	9202			
✓	Order			
	Aff. Posting			
	Status Rpt			
	UCCJEA			
	Citation			
	FTB Notice			
				Reviewed by: KT
				Reviewed on: 9/3/2013
				Updates:
				Recommendation:
				File 1 – McCrain

Age: 3 years Cont. from <input type="checkbox"/> Aff.Sub.Wit. <input checked="" type="checkbox"/> Verified <input type="checkbox"/> Inventory <input type="checkbox"/> PTC <input type="checkbox"/> Not.Cred. <input checked="" type="checkbox"/> Notice of Hrg <input checked="" type="checkbox"/> Aff.Mail <input type="checkbox"/> Aff.Pub. <input type="checkbox"/> Sp.Ntc. <input type="checkbox"/> Pers.Serv. <input type="checkbox"/> Conf. Screen <input type="checkbox"/> Letters <input type="checkbox"/> Duties/Supp <input type="checkbox"/> Objections <input type="checkbox"/> Video Receipt <input type="checkbox"/> CI Report <input type="checkbox"/> 9202 <input checked="" type="checkbox"/> Order <input type="checkbox"/> Aff. Posting <input type="checkbox"/> Status Rpt <input type="checkbox"/> UCCJEA <input type="checkbox"/> Citation <input type="checkbox"/> FTB Notice	TERESA LYNN HANNON , Guardian, is petitioner. Account period: 5/17/12 – 5/31/13 <table style="width: 100%;"> <tr> <td style="width: 30%;">Accounting</td> <td style="width: 10%;">-</td> <td style="width: 60%; text-align: right;">\$117,293.97</td> </tr> <tr> <td>Beginning</td> <td>-</td> <td style="text-align: right;">\$112,652.08</td> </tr> <tr> <td>Ending POH</td> <td>-</td> <td style="text-align: right;">\$117,268.97</td> </tr> </table> <table style="width: 100%;"> <tr> <td style="width: 30%;">Guardian</td> <td style="width: 10%;">-</td> <td style="width: 60%; text-align: right;">waives</td> </tr> <tr> <td>Attorney</td> <td>-</td> <td style="text-align: right;">waives</td> </tr> </table> Petitioner prays for an order: 1. That the Court make an order approving, allowing and settling the first account of guardian as filed.	Accounting	-	\$117,293.97	Beginning	-	\$112,652.08	Ending POH	-	\$117,268.97	Guardian	-	waives	Attorney	-	waives	NEEDS/PROBLEMS/COMMENTS: Note: If the petition is granted, a status hearing will be set as follows: <ul style="list-style-type: none"> Friday, July 24, 2015 at 9:00 a.m. in Department 303, for the filing of the second account. Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.
Accounting	-	\$117,293.97															
Beginning	-	\$112,652.08															
Ending POH	-	\$117,268.97															
Guardian	-	waives															
Attorney	-	waives															
		Reviewed by: KT															
		Reviewed on: 9/4/2013															
		Updates:															
		Recommendation:															
		File 3 – Hannon															

Age: 6 years Cont. from <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;"></td> <td style="width: 15%;">Aff.Sub.Wit.</td> <td style="width: 5%;"></td> </tr> <tr> <td style="text-align: center;">✓</td> <td>Verified</td> <td></td> </tr> <tr> <td></td> <td>Inventory</td> <td></td> </tr> <tr> <td></td> <td>PTC</td> <td></td> </tr> <tr> <td></td> <td>Not.Cred.</td> <td></td> </tr> <tr> <td style="text-align: center;">✓</td> <td>Notice of Hrg</td> <td></td> </tr> <tr> <td style="text-align: center;">✓</td> <td>Aff.Mail</td> <td style="text-align: center;">W/</td> </tr> <tr> <td></td> <td>Aff.Pub.</td> <td></td> </tr> <tr> <td></td> <td>Sp.Ntc.</td> <td></td> </tr> <tr> <td></td> <td>Pers.Serv.</td> <td></td> </tr> <tr> <td></td> <td>Conf. Screen</td> <td></td> </tr> <tr> <td></td> <td>Letters</td> <td></td> </tr> <tr> <td></td> <td>Duties/Supp</td> <td></td> </tr> <tr> <td></td> <td>Objections</td> <td></td> </tr> <tr> <td></td> <td>Video Receipt</td> <td></td> </tr> <tr> <td></td> <td>CI Report</td> <td></td> </tr> <tr> <td></td> <td>9202</td> <td></td> </tr> <tr> <td style="text-align: center;">✓</td> <td>Order</td> <td></td> </tr> <tr> <td></td> <td>Aff. Posting</td> <td></td> </tr> <tr> <td></td> <td>Status Rpt</td> <td></td> </tr> <tr> <td></td> <td>UCCJEA</td> <td></td> </tr> <tr> <td></td> <td>Citation</td> <td></td> </tr> <tr> <td></td> <td>FTB Notice</td> <td></td> </tr> </table>		Aff.Sub.Wit.		✓	Verified			Inventory			PTC			Not.Cred.		✓	Notice of Hrg		✓	Aff.Mail	W/		Aff.Pub.			Sp.Ntc.			Pers.Serv.			Conf. Screen			Letters			Duties/Supp			Objections			Video Receipt			CI Report			9202		✓	Order			Aff. Posting			Status Rpt			UCCJEA			Citation			FTB Notice		<p>TERESA LYNN HANNON, Guardian, is petitioner.</p> <p>Account period: 5/17/12 – 5/31/13</p> <table style="width: 100%;"> <tr> <td style="width: 35%;">Accounting</td> <td style="width: 5%; text-align: center;">-</td> <td style="width: 60%;">\$117,293.97</td> </tr> <tr> <td>Beginning</td> <td style="text-align: center;">-</td> <td>\$112,652.08</td> </tr> <tr> <td>Ending POH</td> <td style="text-align: center;">-</td> <td>\$117,268.97</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Guardian</td> <td style="text-align: center;">-</td> <td>waives</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Attorney</td> <td style="text-align: center;">-</td> <td>waives</td> </tr> </table> <p>Petitioner prays for an order:</p> <p>2. That the Court make an order approving, allowing and settling the first account of guardian as filed.</p>	Accounting	-	\$117,293.97	Beginning	-	\$112,652.08	Ending POH	-	\$117,268.97				Guardian	-	waives				Attorney	-	waives	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Note: If the petition is granted, a status hearing will be set as follows:</p> <ul style="list-style-type: none"> Friday, July 24, 2015 at 9:00 a.m. in Department 303, for the filing of the second account. <p>Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.</p>
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		File 4 – Hannon																																																																																										

DOD: 02/03/12		JOSHUA DAVID LEONG , Administrator, is Petitioner. Account period: 06/14/12 – 06/31/13 Accounting - \$204,105.04 Beginning POH - \$157,910.04 Ending POH - \$164,897.20 Administrator - not addressed Attorney - not addressed Costs - not addressed Petitioner states that the creditor's claim of Access Capital Services was rejected on 06/01/13. This claim was not rejected sooner because the Petitioner was communicating with the creditor to discuss the claim with perhaps settle it. Petitioner, prior to receiving letters of administration, had in good faith paid past rent for the decedent's office space, collected the security deposit, transferred possession of the office back to the creditor by relinquishing the keys to the office manager, believing all further obligations of rent were met. Once the unexpected claim was received, administrator made attempts to resolve the claim. The creditor has not brought an action on the claim and there is adequate security for the claim. The estate is solvent. Petitioner states that the estate cannot be distributed until the rejected creditor's claim has been resolved and any other taxes due are paid. Petitioner estimates that an additional three months will be needed. Petitioner prays for an Order: 1. Allowing, settling and approving the first account; 2. Confirming and approving all acts and proceedings of the administrator.	NEEDS/PROBLEMS/COMMENTS: <u>Note:</u> A Creditor's Claim was filed by the Fresno County Revenue Collections Unit in the amount of \$3,266.67 on 08/09/13.
Cont. from			
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
<input checked="" type="checkbox"/>	Inventory		
<input checked="" type="checkbox"/>	PTC		
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Reviewed by: JF

Reviewed on: 09/03/13

Updates:

Recommendation:

File 5 – Leong

(1) First and Final Report of Executrix and Petition for Its settlement on Waiver of Account and (2) for Allowance of Statutory Fees to Executrix and Attorney for Ordinary Services and (3) for Final Distribution

DOD: 07/23/12		DEBBIE M. KORTE , Executor, is Petitioner.	NEEDS/PROBLEMS/COMMENTS: 1. The Petition indicates at Paragraph 16 that the Executor has waived her statutory compensation, however at paragraph 17 the Executor's statutory fee calculation is provided and the prayer requests an order to pay the Executor her ordinary compensation. Need clarification. It is noted that the proposed distribution is with the Executor's fee being paid to her. 2. Decedents will leaves her estate to her children who survive her or to the decedents of any deceased child. Decedent's son, Darrell Ray Pat Frantz, died after the decedent on 08/15/12. Petitioner proposed to distribute Darrell's share to Spencer Frantz, however, since he died after the decedent, his share is distributable to Darrell Frantz' estate and cannot be distributed directly to Darrell's heirs without additional documentation/information.
		Accounting is waived.	
		I & A - \$165,000.00	
		POH - \$17,815.50 (all cash)	
Cont. from		Executor - \$5,740.00 or waived?	
<input type="checkbox"/>	Aff.Sub.Wit.	Executor costs - \$3,129.43 (for expenses paid for house repairs, PG&E, mortgage payment, insurance, utilities)	
<input checked="" type="checkbox"/>	Verified	Attorney - \$5,740.00 (statutory)	
<input checked="" type="checkbox"/>	Inventory	Costs - \$1,255.00 (filing fees, publication, certified copies)	
<input checked="" type="checkbox"/>	PTC	Distribution pursuant to decedent's will, is to:	
<input checked="" type="checkbox"/>	Not.Cred.	Debbie M. Korte - \$478.76	
<input checked="" type="checkbox"/>	Notice of Hrg	William T. Frantz, III - \$478.77	
<input checked="" type="checkbox"/>	Aff.Mail	Heidi M. Frantz - \$478.77	
<input type="checkbox"/>	Aff.Pub.	Spencer Frantz - \$478.77	
<input type="checkbox"/>	Sp.Ntc.		
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<input type="checkbox"/>	Citation		
<input checked="" type="checkbox"/>	FTB Notice		
			Reviewed by: JF
			Reviewed on: 09/04/13
			Updates:
			Recommendation:
			File 6 – Palmer

**Petition to Remove Trustee, to Appoint Public Administrator as Trustee, and To
Compel Trustee to Account**

Dale W. Balagno DOD: 3-16-13		JOSEPH BALAGNO , Beneficiary, is Petitioner. Petitioner states: <ul style="list-style-type: none">• The Revocable Trust of Dale W. Balagno was established via Declaration of Trust dated 3-6-13. The trust corpus consists primarily of bank and investment accounts held with several banking institutions.• The Trustee of the Trust is Nicholas T. Kovacevich and purports to be acting in that capacity.• The beneficiaries are Lori Jo Brown, Linda Sue Balagno, Joseph Dale Balagno (Petitioner), and Mary E. Pond.• Petitioner is informed and believes that the Trustee has conveyed real property, other accounts, and personal property of the trust to Mary E. Pond without accounting, notice or acknowledgment whatsoever to Petitioner and other beneficiaries. Only upon Petitioner's contacting the various banking and investment institutions did Petitioner learn of such. See attached Trust Transfer Deed dated 3-27-13.• Petitioner also believes the trustee has distributed other investment accounts to Ms. Pond or to himself without notice, and/or is concealing the identity of other assets comprising the trust estate. Petitioner is informed and believes that certain accounts have been closed or blocked without notice or accounting to beneficiaries.• Petitioner has asked the trustee for a list of assets; however, he has refused to comply with such request. Petitioner has been forced to freeze various accounts as a result.• Petitioner seeks an order removing the trustee on grounds that he refuses to respond after demands having been made, conveys property without notice or accounting to either Ms. Pond or himself, changes mailing addresses and ownership of various accounts to the name of Ms. Pond, and refuses to correspond or communicate with Petitioner and other beneficiaries. SEE ADDITIONAL PAGES	NEEDS/PROBLEMS/COMMENTS: <u>Continued from 6-24-13, 7-29-13, 8-13-13 (Settlement Conf), and 8-20-13 (Continued Settlement Conf)</u> <u>Minute Order 6-24-13:</u> Continued to 7-29-13. <u>Minute Order 7-29-13:</u> Mr. Gromis is appearing specially for Nicholas Kovacevich. The Court indicates to the parties that Mr. Kovacevich is not to advise the beneficiaries, but is to act as a trustee only. Parties are directed to return to Court at 10:30 a.m. to engage in settlement discussions. Continued to 9-9-13 at 9:00 a.m.; set on 8-13-13 at 10:00 a.m. for Settlement Conference. <u>Note:</u> These Examiner Notes were originally prepared for the hearings of 6-24-13 and 7-29-13. Trustee Nicholas Kovacevich filed a Declaration on 8-8-13 that states extensive documentation was delivered to Attorney Armo; however, this has not been reviewed by Examiner as it was filed for Settlement Conference. Examiner Notes are not provided for Settlement Conference. <u>Minute Order 8-13-13 (Settlement Conference):</u> Present: David Gromis. Also present in the courtroom are Mr. Armo's clients. The Court is informed that Mr. Armo is out of state, but will be available next week. Continued to 8-20-13. <u>Minute Order 8-20-13:</u> With regard to account #xxx005, the Court orders the Fresno Fire Department Credit Union to provide Mr. Kovacevich, the trustee all bank statements for the period 2013 to the present. Counsel is directed to prepare the order. Set on 9-9-13 for Status Hearing. SEE ADDITIONAL PAGES <u>Reviewed by:</u> skc <u>Reviewed on:</u> 9-3-13 <u>Updates:</u> <u>Recommendation:</u> <u>File</u> 7A – Balagno
Cont. from 062413, 072913, 081313, 082013			
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg	X		
Aff.Mail	X		
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order	X		
Aff. Posting			
Status Rpt			
UCC/JEA			
Citation			
FTB Notice			

Page 2

Petitioner states a trustee may be removed on petition under §§ 17200, 15642a for breach or other good cause, including hostility. Remedies include compel performance, enjoin trustee from further breach, equitable lien on property. Petitioner believes the trustee is intentionally refusing to communicate so to make further conveyances to Ms. Pond or himself without providing notice or accounting to other beneficiaries.

Petitioner prays for an Order:

1. Removing Nicholas T. Kovacevich as trustee of the Trust of Dale W. Balagno;
2. Ordering Nicholas T. Kovacevich account for his actions as trustee;
3. Appointing the Public Administrator as successor trustee;
4. Ordering Nicholas T. Kovacevich bear his own costs and attorney fees for defense of this action;
5. Ordering Nicholas T. Kovacevich retitle the trust estate property in the name of the trust;
6. For all costs of suit incurred; and
7. For such other and further relief as the Court may deem just and proper.

Petitioner provides various citations for the request.

See Petition and supplemental declaration filed 6-19-13.

NEEDS/PROBLEMS/COMMENTS:**Examiner's Note (Relevant dates/events):**

- DW Balagno created trust on 3-6-13
- DW Balagno DOD 3-16-13
- Letter dated 4-5-13 from Linda Balagno and Lori Brown imposed deadline of 4-11-13 for info
- Letter dated 4-16-13
- Petition filed 5-9-13 (without copy of trust or other relevant information, such as the date of death of the settlor)
- Declaration w/ copy of trust and additional information per Examiner Notes was filed 6-19-13
- Notice of Hearing was mailed on 6-24-13.

Examiner's Note (Trust details):

- DW Balagno created trust on 3-6-13 (10 days prior to his death on 3-16-13)
- It appears the trust was created by an LDA (not an attorney)
- It appears that Mary E. Pond (unknown relation) also created a trust on the same date as petitioner and transferred her property into it.
- Trust names three Successor Trustees: Nicholas T. Kovacevich (a local CPA), Jo Ann Barnes (unknown relation), and Mary E. Pond (unknown relation)
- The Trust itself specifically distributes personal property to DW Balagno's three children and Mary E. Pond equally.
- The Trust Property Schedule defines personal property, and then goes on to state that the real property at 4157 E. Alta in Fresno is "**NOT IN TRUST**" and is held in joint tenancy with Linda Sue Balagno, one of the daughters.

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS (Continued):

1. The petition states Petitioner has asked the trustee for a list of assets, but the trustee refused to comply with such request. However, this petition to remove the trustee was filed less than 60 days after the death of the settlor.

Petitioner's declaration attaches a copy of a letter from beneficiaries Linda Balagno and Lori Brown (not Petitioner) dated 4-5-13 (3 weeks after the death of the settlor) demanding a list of items by 4-11-13, which gave the new trustee 6 days to comply, only three weeks after becoming successor trustee. Attorney Armo sent another letter on 4-16-13.

Examiner notes that Probate Code § 16061.7(f) allows the trustee 60 days for just the initial notification to beneficiaries of the status of the trust changing to irrevocable, and Probate Code 16061 requires reasonable request by beneficiary for information relating to the administration of the trust. Further, Probate Code § 17200(b)(7)(C) allows a petition to be filed under this section if the trustee has failed to account within 60 days of reasonable request.

This petition was filed less than 60 days after the death of the settlor, and it does not appear that the trustee was afforded appropriate time for response before filing. Petitioner's declaration at #9 states that now 60 days have elapsed. **However, this petition still appears to have been filed prematurely. Need authority.**

2. Petitioner states the attached deed **evidences conveyance of trust real property** to Ms. Pond. However, the attached deed is a transfer of unspecified real property from Grantor Mary E. Pond to Mary E. Pond, Trustee of the Mary E. Pond Revocable Trust **dated 3-6-13 (Settlor still alive)**, with no mention of this trust or trustee, and no address specified to clarify for the Court the property that is the subject of this petition.

When Petitioner provided a declaration in response to Examiner Notes for the last hearing, Petitioner explained that the property was originally held in the trust of Dale Balagno, and the attached deed presupposes that title to the subject property was conveyed to Mary Pond previously, without notice to Petitioner or beneficiaries.

However, again, the deed is dated 3-6-13, which is prior to the Settlor's death. If property was transferred to Ms. Pond prior to that date, then the alleged transfer occurred prior to the Settlor's death. Further, the copy of the Trust and Trust Property Schedule provided with the declaration does not appear to reference any real property subject to the trust. Rather, the body of the trust specifically references personal property only, and the Trust Property Schedule specifically states that the Settlor's real property located at 4157 E. Alta in Fresno is **"NOT IN TRUST"** and is **held in joint tenancy with LINDA SUE BALAGNO**.

Examiner notes that the trust itself appears to be a template-type document prepared by a document assistant, rather than an attorney, with a designated spot to list real property, but instead the language added states that the Settlor's real property located at 4157 E. Alta in Fresno is "NOT IN TRUST" and is held in joint tenancy with LINDA SUE BALAGNO.

Therefore, if this petition goes forward, need clarification: What property is Petitioner alleging was an asset of the trust that the successor trustee Nicholas T. Kovacevich improperly transferred to Ms. Pond, and when?

3. Alternate named successor trustee **Jo Ann Barnes** was not served with Notice of Hearing. Need proof of service of Notice of Hearing at least 30 days prior to the hearing on Jo Ann Barnes. Probate Code § 17203(a)(1).

SEE ADDITIONAL PAGES

NEEDS/PROBLEMS/COMMENTS (Continued):

4. Probate Code § 15660.5 provides the requirements for appointment of the Public Administrator, including a finding that no other qualified person is willing to act as trustee. Examiner notes that the trust names two alternate successor trustees, Jo Ann Barnes and Mary E. Pond. Jo Ann Barnes was not served with notice of hearing (see #3 above). The Court may require clarification in order to make the findings necessary to appoint the Public Administrator.
 5. **If this petition goes forward, need consent to serve from Public Administrator.** Probate Code § 15660.5(a)(2)(B). Note that Probate Code § 15660.5(a)(2)(A) allows the Court to appoint the Public Administrator to if the trust is to immediately be distributed according to its terms. However, this does not appear to be the case. Therefore, need consent per Probate Code § 15660.5(a)(2)(B).
-

Dale W. Balagno DOD: 3-16-13		JOSEPH BALAGNO , Beneficiary, filed a Petition to Remove Trustee, to Appoint Public Administrator as Trustee, and to Compel Trustee to Account.	NEEDS/PROBLEMS/COMMENTS:
		NICHOLAS T. KOVACEVICH , Trustee, filed a Declaration on 8-8-13 (prior to Settlement Conference) indicating information provided to Petitioner's attorney.	
	Aff.Sub.Wit.	At Settlement Conference on 8-20-13, the Court set this status hearing.	
	Verified		
	Inventory	Minute Order 8-20-13: With regard to account #xxx005, the Court orders the Fresno Fire Department Credit Union to provide Mr. Kovacevich, the trustee all bank statements for the period 2013 to the present. Counsel is directed to prepare the order. Set on 9-9-13 for Status Hearing.	
	PTC		
	Not.Cred.	<i>Note: Court Order to Release Bank Statemenet sof Fresno Fire Dept Credit Union was signed by Judge Oliver on 8-23-13.</i>	
	Notice of Hrg		
	Aff.Mail		
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
	Letters		
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
	Order		
	Aff. Posting	Reviewed by: skc	
	Status Rpt	Reviewed on: 9-3-13	
	UCCJEA	Updates:	
	Citation	Recommendation:	
	FTB Notice	File 7B – Balagno	

Atty Kruthers, Heather H., (for Public Guardian)

Atty Walters, Jennifer L., (Court-appointed for Conservatee)

Re-consideration of Medical Powers

Age: 86 years		<p>PUBLIC GUARDIAN was appointed as conservator of the person and estate on 7/25/2013.</p> <p>The initial Petition for Appointment of Conservator requested medical consent powers pursuant to Probate Code §2355. At the time of the hearing on 7/25/2013 a Capacity Declaration had not been filed. The Court granted the Conservatorship Petition without medical consent powers and set this hearing for re-consideration of the medical consent powers.</p> <p>Capacity Declaration filed on 8/30/2013 does not support medical consent powers.</p>	NEEDS/PROBLEMS/COMMENTS:
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Citation			
FTB Notice			
		Reviewed by: KT Reviewed on: 9/3/2013 Updates: Recommendation: File 8 – Valencia	

9 Kinghorn Children Irrevocable Life Ins Trust

Case No. 13CEPR00639

Atty Fishman, Robert G. and Callister, Jared R. (for Donald J. Kinghorn, Deloris W. Kinghorn, Rachel A. Kinghorn, and Brian A. Kinghorn)

Petition for Order Appointing Trustee, and for Order Approving Modification of Trust Terms

		<p>DONALD J. KINGHORN, DELORIS W. KINGHORN, RACHEL A. KINGHORN, and BRIAN A. KINGHORN, are Petitioners.</p> <p>Petitioners state:</p> <p>1. On 12/18/06, petitioners Donald J. Kinghorn and Deloris W. Kinghorn (collectively "Settlers") executed a declaration of trust with an effective date of December 14, 2006, forming the KINGHORN CHILDREN IRREVOCABLE LIFE INSURANCE TRUST (the "Trust"). The Trust is generally referred to as an "irrevocable life insurance trust" or "ILIT" and is meant to ensure that life insurance proceeds paid on the death of the surviving Settlor are not included in the Settlor's estates for estate tax purposes. The beneficiaries of the Trust are the Settlor's two children and petitioners herein – Rachel A. Kinghorn (age 21) and Brian A. Kinghorn (age 19) (collectively the "Children Beneficiaries").</p> <p>2. The Trust designates Calvin M. Dyer as Trustee of the Trust and designates Debora Ozdinski as the Successor Trustee. Mr. Dyer has served as Trustee of the Trust since its execution on 12/18/06. However, by letter dated 05/19/13, Mr. Dyer resigned as Trustee, which resignation was consented to and accepted by the Children Beneficiaries of the Trust. Ms. Ozdinski does not desire to serve as Trustee but has agreed to serve as Trustee on a temporary basis until a successor trustee can be appointed by the Court. Ms. Ozdinski is only agreeing to serve as a temporary Trustee in order to accommodate Petitioners and to ensure that there is no period during which the Trust does not have a functioning trustee.</p> <p>Continued on Page 2</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p>	
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Reviewed by: JF

Reviewed on: 09/04/13

Updates:

Recommendation:

File 9 – Kinghorn

3. Section 5.02 of the Trust provides that upon reaching age 25, the Children Beneficiaries are to serve as Co-Trustees. In addition, section 5.03 provides that if both Mr. Dyer and Ms. Ozdinski are unable to serve or cease serving as trustee, then the Settlers can appoint a "bank" as successor Trustee until such time that the Children Beneficiaries reach age 25.
4. Because of the limited duration of time a bank trustee would serve (approximately four years until Rachel turned 25) and because of the relatively small size of the Trust estate, it has been impossible for the Settlers to find a bank willing to serve as Trustee. As a result, the only option available to the Petitioners is to seek a court order appointing a successor Trustee.
5. Petitioners request that the Court appoint Rachel A. Kinghorn (daughter of Settlers, Age 21, Petitioner herein and beneficiary of the Trust).
6. Petitioners also desire to modify certain sections of Article V, dealing with the designation of trustees so that, in the future, there will be a reduced likelihood of having a vacancy in the office of trustee. Petitioners request that Section 5.01, 5.02 and 5.03 be revoked in their entirety and replaced and that a new Section 5.05 be added.
 - a. In summary, the new Section 5.01 designates Rachel A. Kinghorn as the sole trustee and in the event she ceases to act as trustee then Brian A. Kinghorn shall serve. If both are unable to serve then the last person to serve as trustee shall have the power to appoint a successor trustee.
 - b. In summary, the new Section 5.02 states that when Brian A. Kinghorn reaches age 25, and he so accepts, then he and Rachel A. Kinghorn shall be co-trustees. If either Rachel or Brian dies or ceases to act, then the other shall serve as the sole Trustee. If both are unable to serve then the last person to serve as trustee shall have the power to appoint a successor trustee.
 - c. In summary, the new Section 5.03 states that the Settlers jointly, or any surviving Settlor, has the power to remove a trustee or trustees at any time and appoint a successor trustee.
 - d. Section 5.05 states: "No Trustee Designated or Appointed. In the event that no successor trustee has been designated or appointed as provided throughout this Article V, then all of the adult income beneficiaries of the Trust may unanimously appoint a successor trustee or co-trustee."
7. Petitioners believe that such a modification is justified and beneficial because it will help to reduce the likelihood of having to file court petitions to name and appoint successor trustees of the Trust in the future if the Children Beneficiaries do not serve as trustees.
8. Petitioners (composed of the Settlers and Children Beneficiaries) have brought this petition and believe that no guardian ad litem is needed in this case. The Children Beneficiaries' interests in the Trust and in the subject matter of this Petition are identical to those of the Children Beneficiaries unborn issue and other unascertained beneficiaries are adequately represented by the Children Beneficiaries and no guardian ad litem is needed. Further, the matters requested in this Petition do not change or alter the rights of any contingent beneficiaries as they relate solely to the designation of the Trust's trustees.

Petitioners pray for an Order:

1. Accepting the resignation of Debora Ozdinski as Trustee of the Trust;
2. Approving the appointment of Rachel A. Kinghorn as Trustee of the Trust;
3. Approving the requested modifications of the Trust; and
4. Determining that, with respect to the Petition, the interests of any unborn or unascertained beneficiaries are adequately represented without the appointment of a guardian ad litem.

Petition for Construction of a Trust Instrument and the Appointment of Estate Tax
and Generation Skipping Transfer Tax

Harvey N. Spann DOD: 3-30-95	<p>ROBERT SWANTON, Trustee of Survivor's Trust A established under the Harvey Newell Spann and Gladys Marceline Spann Revocable Living Trust as amended, is Petitioner.</p> <p>Petitioner states the Trust dated 10-10-85 was amended and restated on 2-24-95. Surviving Trustor Gladys Spann further amended via instrument entitled "Surviving Trustor's Directive to Trustee Regarding Trust A, The Surviving Trustor's Trust" (the Directive).</p> <p>Petitioner desires a Court order determining the construction of the Amended Trust and Directive with respect to two issues:</p> <p>(i) to determine the effectiveness of the Directive and its scope in appointing the share of Trust A (Survivor's Trust) to the Trustors' son Jack Newell Spann; and</p> <p>(ii) to determine the allocation of estate taxes, debts and administrative expenses following Gladys' death.</p> <p>Pursuant to the terms of the trust, the Surviving Trustor was permitted to amend Trust A in whole or in part and had a general power of appointment over the principal balance of Trust A. The 2-24-09 Directive adds Paragraph H to Article VIII (Debts, Administration Expenses and Taxes) and ratifies and confirms the no-contest provision.</p> <p>The Directive also includes a section that sets forth instructions to the Trustee on how Trust A shall be held, administered and distributed on her death, including that a pecuniary amount equal to the unused and remaining GST Exemption shall be distributed to Trustors' Granddaughters, and the balance, if any, is to be distributed in trust for the benefit of Jack.</p> <p>Petitioner believes that while the effectiveness of the Directive may be disputed, that it would be appropriate for this Court and consistent, insofar as known to the Petitioner, to find that the Directive constituted an effective exercise of a power of appointment by Gladys as the Surviving Trustor over the principal of Trust A and powers retained by Gladys with respect to Trust A.</p> <p>If effective, the Trustors' son Jack Newell Spann receives his share of Trust A in trust subject to the terms and conditions set forth in the Directive after the bequests of a pecuniary amount equal to the unused and remaining Generation Skipping Tax Exemption of the Surviving Trustor are distributed to Jack's daughters, Jacqueline Stark, Jennifer Dee Spann Temple, and Janis Dee Spann (Trustors' Granddaughters).</p> <p>If not effective, then Jack receives the foregoing share outright.</p> <p style="text-align: center;">SEE ADDITIONAL PAGES</p>	NEEDS/PROBLEMS/ COMMENTS:
Gladys M. Spann DOD: 9-27-12		Note: Consents were filed 9-3-13 by all beneficiaries:
		- Jack Newell Spann
		- Jacqueline Stark
		- Jennifer D. Temple
		- Janis Dee Spann.
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		Reviewed by: skc
		Reviewed on: 9-4-13
		Updates:
		Recommendation:
		File 10 - Spann

Page 2

Petitioner provides explanation of the terms of the amended trust and the directive with regard to the various exempt and non exempt shares, and also provides a declaration in support of the petition from Gerald Lee Tahajian, the Trustors' attorney. Mr. Tahajian explains that the amendments were intended to amend Trust A only, as Trusts B and C were not subject to amendment after Harvey Newell Spann's death. Paragraph H was added to reflect Mrs. Spann's intention that each Trust pay their prorata share of tax so that their grandchildren would benefit. His notes reflect that the provision was discussed in an office conference with Mrs. Spann, Robert Swanton (her CPA and Trustee) and Attorney Tahajian on 1-29-09.

Mr. Tahajian states that Gladys stated she believed that Jack had received a substantial amount during her lifetime and she desired to benefit her granddaughters.

See also Points and Authorities filed concurrently.

Petitioner prays for an order as follows:

1. Determining whether or not **Surviving Trustor Gladys Spann** effectively exercised her general power of appointment over Trust A, and with respect thereto that the following determination be made:

Consistent with the intention of Gladys and giving is effect to the **Directive** that distribution of the principal of Trust A allocated to **Jack Newell Spann** to be held, administered and distributed in trust giving effect to said exercise and that the income as of the death of Gladys with respect to Trust A be distributed outright to Jack;

2. Determining consistent with California Law that the allocation of expenses and taxes (both estate and generation-skipping transfer taxes) among the shares and subtrusts of the **Amended Spann Revocable Living Trust** in recognition of the **Directive**, including whether or not there has been a waiver of reimbursement pursuant to Section 2207A of the Internal Revenue Code and authorizing payments by the Trustee in accordance with such order; and with respect there that the following determination be made:

(A) That the estate taxes applicable to Trust C (exempt and non-GST exempt portions of Trust C) arising on the death of **Gladys** shall be charged and paid from the non-GST exempt part of Trust C without reimbursement and that the right of reimbursement has been effectively waived under the terms and conditions of the **Amended Spann Revocable Living Trust** and the **Directive**; and that the Trustee pay estate taxes accordingly.

(B) That the GST taxes applicable to a trust that gives rise to GST tax, if any, shall be paid to and charged against said trust; and, that GST taxes, if any, be paid by the Trustee accordingly.

(C) That the administrative expenses of Trust B and Trust C are allocated to Trust A as a contribution by **Gladys** and the Trustee is authorized to make said payments; and

3. Such further orders as the Court considers proper.

Status Hearing Re: Filing of the Inventory and Appraisal

Age:		NEEDS/PROBLEMS/COMMENTS:	
DOD:			
Cont. from			<u>OFF CALENDAR</u> First and Final Account filed 8-27-13 is set for hearing on 10-2-13
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Status Rpt		Reviewed by: skc	
UCCJEA		Reviewed on: 9-4-13	
Citation		Updates:	
FTB Notice		Recommendation:	
		File 13 – Cross	

Status Hearing

Age:		NEEDS/PROBLEMS/COMMENTS: <u>CONTINUED TO 11/22/13</u> Per note in the file
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Reviewed by: JF		
Reviewed on: 09/04/13		
Updates:		
Recommendation:		
File 14 – Ybarra		

Atty Moua, Pa Ying (pro per Temporary Guardian/sister)
 Atty Madrid, Miles (pro per Temporary Guardian/sister's fiancé)
 Atty Hopper, Cindy J (for Petitioners/parents Kong Peng Vang and Helene Tcha)

Motion to Set Aside Temporary Orders

Elijah age: 16	KONG PENG VANG , father, and HELENE TCHA , mother, are petitioners.	NEEDS/PROBLEMS/COMMENTS:
Lexie age: 15		
Madison age: 7	PA YING MOUA , half-sister, and MILES MADRID , sister's fiancé, were appointed temporary guardians on 8/22/2013.	Order Shortening Time for the Court to hear the Motion to Set Aside the Temporary Guardianship ordered the Motion to be served no later than September 3, 2013 with responses filed no later than September 6, 2013. 1. Need proof of service of the Motion to Set Aside the Temporary Guardianship and supporting documents on: a. Pa Ying Moua b. Miles Madrid
Cont. from	In their temporary petition, Pa Ying Moua and Miles Madrid alleged: the minor's parents had not only been physically and emotionally abusive towards the minors, but had abandoned them in the country of Thailand. Petitioners stated they felt the minors were in danger of physical and emotional harm if they continue under the care of their parents.	
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Please see additional page		Reviewed by: KT Reviewed on: 9/4/2013 Updates: Recommendation: File 20 – Vang

Petitioners state after accessing the opportunities in Thailand ad decision was made as a family in order to better their finances and circumstances to move to Thailand. Prior to the move they placed their residence located in Fresno for sale. The residence had not sold when they left. They moved to Thailand on June 16, 2013. They left Thailand on July 17, 2013 to return to the U.S. to complete the sale of their residence and other financial matters before returning to Thailand. The intent when they left Thailand was to return by September 2, 2013. The children were left with Peng (father) cousin's husband. He is not a stranger. The children met him when he came to California in December 2012.

Upon returning to California it came to their attention that their house was not going to close escrow as fast as they thought and their other business dealings were taking longer than expected. Since they didn't know how long everything would take they brought the children back to California on 8/23/2013. Upon their return to the U.S. they were removed from the customs area at LAX based on the Petitioners' orders and letters issued by the court.

Pa Ying states in her petition that the parents have been physically and emotionally abusive towards the children and that they were abandoned in Thailand. This is not true. She states there is a history of CPS investigations and both have criminal records for neglect and abuse. This is not true. What is true is that there have been several calls to CPS all of which were made by Pa Ying. A social worker came to the home and found the allegations unfounded.

Pa Ying filed a supplemental declaration attaching text messages between Pa Ying and Lexie as well as photographs of Lexie in a towel. One of the businesses in Thailand is a spa. Lexie has a fair complexion and they wanted to use her as a model. The business is family owned and Lexie was helping with the business. Petitioners state they did not force Lexie to model but rather she willingly agreed. These pictures were not used in their advertising but were test pictures.

Pa Ying also states in her supplemental declaration that that she was requesting orders to permit her to travel to Thailand to retrieve the children. What Pa Ying did not inform the court is that she knew the children were already returning home and that they would return on 8/23/2013, one day after the hearing.

It is Petitioner's belief that Pa Ying is upset that the family is moving to Thailand. Pa Ying failed to give Petitioners notice of the hearing on 8/22/2013. Petitioners state they returned home on 7/17/2013 to their home listed in Pa Ying's petition. Pa Ying knew of their whereabouts. Petitioners state they believe that Pa Ying intentionally failed to serve them as she committed perjury in her Petition.

Petitioners request the Court set aside the Order Appointing Temporary Guardian and Letters of Temporary Guardianship filed 8/22/2013 and that the children be returned to their care.

Points and Authorities in Support of Motion to Set Aside Temporary Guardianship.